

July 18, 2000

Informal Opinion #2000-4

Donald G. Edson, Sheriff
Washington County Sheriff's department
P.O. Box 678
Montpelier, Vermont 05601

Dear Sheriff Edson:

You have asked for an interpretation 32 V.S.A. §1591(1), which relates to the fees payable for certain types of service of process in civil cases. These fees, provided for in subsections (1)(A)(ii)(iii) and (iv), are payable "upon presentation of each return of service **for the service of...**"

It has long been the practice for no fees to be sought or paid unless service has in fact been effected. There is now a question as to whether or not the determination of and reporting of correct address information or some other assistance in locating the individual to be served is a service for which this section authorizes payment of a fee.

The plain meaning of the language of the statute would preclude any payment except for the actual service of the process. It is the act of filing a return of service stating that the process was in fact served that triggers payment. Actual service is the activity for which the fees are authorized.

Even though one were to make several trips to effect service of process and many hours might be expended in effecting the service, the time involved is not the basis for the fee. It is a flat rate for the act of serving the process. It is illustrative to note the treatment given mileage to effect service in the statute. It is dealt with by its own separate legislative provision. The legislature created a special provision to deal with mileage reimbursement. They made no such provision for time or other incidental expense that might be involved in effecting the service of process.

Therefore, even though the activities under discussion have value and might lead to a successful service of process or make it happen more efficiently, these preparatory acts are not made compensable under the statute. Payment of the fee is presently authorized only for the actual service of the process.

Should you have any questions, please let me know. Thank you for this opportunity to be of service.

Sincerely yours,

Robert W. Gagnon
Senior Assistant Attorney General

